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IN THE

Supreme Court of the United States

October Term, 1953.

No. 474

R. B. COLBERT, E. J. BARRET, JOHN A. GROSS, J. J. CASSIDY, FRANK W. STRUM, GROVER C. SHIDELER, F. V. MALONE, R. E. CARTER, M. L. PATRICK, MELVIN L. OGAN, JOHN T. TAYLOR, S. T. PRITCHARD, J. M. LEWIS and K. L. GARST,

Petitioners,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, BROTHERHOOD OF RAILROAD TRAINMEN, LODGE NO. 448, LODGE NO. 912, LODGE NO. 22, PACIFIC ELECTRIC RAILWAY COMPANY, BROTHERHOOD OF RAILROAD TRAINMEN, GENERAL GRIEVANCE COMMITTEE, PACIFIC ELECTRIC LINES,

Respondents.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

JOINT BRIEF FOR RESPONDENTS IN OPPOSITION.

Opinions Below.

The District Court in granting motions to dismiss [R. pp. 51-52] did not render an opinion. The opinion of the Court of Appeals for the Ninth Circuit [R. pp. 61-73] is reported at 206 F. 2d 9.

Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition.

Question Presented.

Whether some fourteen of respondent Pacific Electric Railway Company's employees may first bring an action in the District Court to set aside the seniority provisions of a collective bargaining agreement entered into some nine years previously between the bargaining representative and the carrier, and without first proceeding to exhaust the jurisdiction of the National Railway Adjustment Board.

Statute Involved.

The statute involved is the pretinent provisions of the Railway Labor Act (45 U. S. C., Sec. 151, *et seq.*), that relate to the obligation of carriers (45 U. S. C. Sec. 152 First) and the jurisdiction of the National Railway Adjustment Board (45 U. S. C., Sec. 153).

Statement.

The petitioners are a group of fourteen employees[1] who first commenced work during the war emergency between August 6, 1941, and December 22, 1942 [R. p. 9, par. XIV] who seek (in 1951) to set aside a mediation agreement of August 6, 1941 (see Appendix) incorporated into the collective bargaining agreement of December 22, 1942 [R. p. 10, pars. XVI and XVII and pp. 27-28].

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[1]Although the complaint alleges there are numerous other employees similarly situated [R. p. 4, Par. II], it cannot be determined from the allegations how many, if any, are affected.

This agreement was designed to protect the seniority of the older operating employees when the operations of the respondent railway shrunk through abandonment of lines and the loss of passenger business [R. pp. 12-13, par. XXII]. The mediation agreement (Extracts are set forth in Appendix) dated August 6, 1941, subsequently incorporated into the Labor Agreement of December 22, 1942 [R. pp. 17-44], provided for a merged or system seniority system for all new employees employed after August 6, 1941. The reason for this change of seniority was that in 1940 the respondent Pacific Electric Railway Company was abandoning portions of its passenger service [R. p. 9, par. XIII] and had secured the consent of the Interstate Commerce Commission for abandonment of some 90 miles of rail service.[2]

Another problem was presented concurrently with the above merged seniority provision. The Brotherhood urged in the abandonment case that the Interstate Commerce Commission had jurisdiction to include in its order, permitting abandonment (of rail passenger lines and substitution of motor busses), conditions for the protection of affected employees. That matter reached the court in *Interstate Com. Comm. v. Railway L. Ex. Assn.* (1942), 315 U. S. 373, 86 L. Ed. 904. It was argued by the employees:

> ". . . that many of the Pacific's (Electric Railway Company) employees had devoted a large part of their lives to the service of the railroad and had acquired valuable rights of seniority in connection with their employment; that the proposed change

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[2]*Railway Labor Executives, et al. v. United States, et al.* (1941), 38 Fed. Supp. 818; *Interstate Commerce Commission v. Railway L. Ex. Assn.* (1942), 315 U. S. 373, 86 L. Ed. 904.

would cause many of them to lose their jobs as a result of which they would suffer great hardships and some would become public charges; . . ." [See also R. pp. 9-10, par. XV.]

The Commission argued it was without authority to impose any statutory conditions. The court held the Commission had authority to attach terms and conditions for the benefit of employees affected by railroad abandonments. The court also said:

> "Whether such terms and conditions should be attached in this case and if so their nature and extent are questions for the Commission to decide in the light of the evidence."

Thereafter, no conditions for the benefit of employees were incorporated into the Commission's Order. The Mediation Agreement of August 6, 1941 (Appendix) as incorporated into the subsequent Labor Agreement dated December 22, 1942 [R. pp. 17-44; solved the problem of the older employees [R. p. 13, par. XXIII].

This matter resolves itself into the narrow question of the construction of the Mediation Agreement of August 6, 1941 (Appendix), the subsequent Labor Agreement of December 22, 1942 [R. pp. 17-44, Ex. A, and p. 7, par. X], incorporating the provisions of the Mediation Agreement (Appendix), the interpretation thereof, and whether interpretation should be made first by the National Railway Adjustment Board.

ARGUMENT.

The issue in the present case is uniquely narrow, and no amount of argument can convert it into an issue warranting review by this court on certiorari. The petitioners cencede the rule in question relating to seniority is not a standard rule found on the other railroads in the United States [R. p. 8, par. XI], but is a special rule found on respondent Pacific Electric Railway Company, a railroad operating in four counties in Southern California. Likewise, the petitioners' action ignores the effect of a mediation agreement containing the provision complained of, which provision was in effect before and during petitioners' employment, and which mediation agreement subsequently was incorporated into the labor agreement under attack.

Further, the petitioners, employees of the carrier, are attempting to circumvent the provisions of the Railway Labor Act (Title 45, U. S. C., Sec. 151 *et seq.*) in not first taking their matter to the National Railway Adjustment Board, which Board has the exclusive primary jurisdiction in the matter.

I.

The Federal Courts Do Not Have Jurisdiction of the Subject Matter of This Action.

A. The Factual Basis of Jurisdiction.

In their argument (Pet. p. 12), the petitioners assert the case arises under a law regulating commerce, and that petitioners have been discriminated against by their bargaining representative in violation of the provisions

of the Railway Labor Act (Title 45, U. S. C., Sec. 151, *et seq.*). The discrimination alleged is not racial, but involves seniority [Pet. p. 12; R. p. 10, par. XVII]. There is no diversity of citizenship.

No resort was made to the National Railway Adjustment Board by petitioners, but this independent court action was brought. This is a seniority case, and a Brotherhood or labor representative can validly negotiate and execute contracts involving seniority (*Steele v. Louisville & Nashville R. R. Co.* (1944), 323 U. S. 192, 89 L. Ed. 173, 183.)[3] The petitioners do not come within the discrimination doctrine, such as the racial discrimination of the *Steele, Tunstall* and *Howard* cases.[4]

B. The Allegations of the Complaint Fail to Meet the Federal Jurisdictional Requirements.

(1) The mere fact the complaint involves the Railway Labor Act does not give the Court jurisdiction of the subject matter (*Malone v. Gardner* (1932), 62 F. 2d 15, 18). Congress undertook to provide that the bargaining representatives should act for the craft or employees on

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[3]"This does not mean that the statutory representative of a craft is barred from making contracts which may have unfavorable effects on some of the members of the craft represented. Variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, *such as differences in seniority*, . . . are within the scope of the bargaining representative of a craft, all of whose members are not identical in their interest or merit." (323 U. S. 192, 203, 89 L. Ed. 173, 183.)

[4]*Tunstall v. Brotherhood of Locomotive F. & E.* (1944), 323 U. S. 210, 89 L. Ed. 187; *Steele v. Louisville & Nashville R. R. Co.* (1944), 323 U. S. 192, 89 L. Ed. 173, 183; *Graham v. Brotherhood, etc.* (1949), 338 U. S. 232, 94 L. Ed. 22, 28; *Brotherhood, etc. v. Howard* (1952), 343 U. S. 768, 96 L. Ed. 1283. (See also *Hunt v. Crumboch* (1945), 325 U. S. 821, 89 L. Ed. 1954, 1957.)

seniority, that is, the subject matter of the complaint (*Steele v. Louisville & Nashville R. R. Co.* (1944), 323 U. S. 192, 89 L. Ed. 173, 183). If, as here, the labor agreement or contract entered into by the statutory representative (here the Brotherhood) has an unfavorable effect on some of the members of the craft represented, and the subject matter of the contract is "seniority," then such a contract is within the scope of the bargaining representative's power to act, and the bargaining representative was authorized to enter into such a contract (*Steele v. Louisville & Nashville R. R. Co.* (1944), 323 U. S. 192, 89 L. Ed. 173).

Here the Brotherhood is the proper bargaining agent for the craft of the employees concerned [Complaint pars. IV, V, VI and VII, R. pp. 5-6] and was empowered to enter into, on behalf of the railroad employees, the contract in question in this action [Complaint pars. VIII, IX and XVI, R. pp. 6, 7 and 10]. Thus, the complaint has fallen without the discrimination exception of the *Tunstall, Steele* and *Howard* cases. Since the Brotherhood was acting within the scope of the statute (Railway Labor Act) in entering into a contract that involved "seniority,"[5] the District Court had no jurisdiction to entertain this action.

The language of the Railway Labor Act is specific (Title 45, U. S. C. A., Sec. 152 First):

> "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, . . ."

---

[5]*Steele v. Louisville* (1944), 323 U. S. 192, 89 L. Ed. 173, 183.

Here respondent carrier carried out the statutory mandate, and settled the dispute regarding seniority to the satisfaction of the bargaining agent, the respondent Brotherhood.

The question arises as to just what is involved in the complaint of petitioners. Are they seeking to protect some right founded upon the Railway Labor Act or some other federal statute, or are petitioners suing for the taking away of some contract right of value? It is the latter ordinary contract right, if any, that the complaint specifies. In paragraph XVII [R. pp. 10-11] of the complaint, it is alleged:

> "That the change in the agreement entered into on December 22, 1942, in respect to seniority rights, was arbitrarily, capriciously and fraudulently made retroactive to the 6th day of August, 1941, in disregard of the rights acquired by men who entered the service between the 6th day of August, 1941, and before the 22nd day of December, 1942, some of whom are plaintiffs in this action."

And in Paragraph XXI [R. p. 12] of the complaint it is alleged:

> "That as a result of the arbitrary, capricious and fraudulent enactment of the merged seniority provisions of Article 36 above referred to, plaintiffs have lost valuable positions on the lines of defendant P. E. to less experienced men who happened to have been in the service of P. E. in other capacities for a longer period of time than plaintiffs, have been monetarily damaged thereby, and ultimately will have no positions at all."

The whole question of jurisdiction depends upon the sufficiency of the above allegations. Such allegations here presented have been held insufficient in many cases.

Davis v. Southern Ry. (Ala., 1951), 54 So. 2d 308; *Malone v. Gardner* (C. A. 4th, 1932), 62 F. 2d 15; *Barnhart v. Western Maryland Ry.* (C. A. 4th, 1942), 128 F. 2d 709; *Burke v. Union Pacific R. Co.* (C. A. 10th, 1942), 129 F. 2d 844, 847; *Starke v. N. Y. C. & St. Louis R. Co.* (C. A. 7th, 1950), 180 F. 2d 569, 571; *Teague v. Brotherhood, etc.* (C. A. 6th, 1942), 127 F. 2d 53, 55; *Hayes v. Union Pacific* (Cal. D. C., 1950), 88 Fed. Supp. 108; *Broome v. Louisville & N. R. Co.* (Tenn., 1952), 250 S. W. 2d 93.

In the relatively recent case of *Starke v. New York, Chicago & St. Louis R. Co.* (C. A. 7th. Ill., 1950), 180 F. 2d 569, 571, that Court carefully pointed out that the plaintiff in that case, as the petitioners in the case before this Court, were not relying upon a Federal statute which condemns as unlawful the Brotherhood's conduct, but upon a right conferred by State Statute. The Court said:

> "It is plain that the wrong of which plaintiff complains, that is, the impairment of his seniority rights, stems entirely from an agreement entered into in conformity with the requirements of the Act between plaintiff's bargaining agent and the defendant. Plaintiff has no statutory or constitutional right to seniority. Such right exists solely by reason of the contract. Hence his right is not one which 'involves a dispute or controversy respecting the validity, construction, or effect of such a law, upon the determination of which the result depends.' . . .
>
> ". . . there is no contention here that the agreement relied upon is condemned by the statute, but on the other hand it concededly is in conformity therewith."

In *Teague v. Brotherhood of Locomotive Firemen, etc.* (C. A. 6th, Tenn., 1942), 127 F. 2d 53, 55, the Court said:

> "The present suit concededly is based upon private contracts between the appellants and members of his class on the one hand, and the Railroad on the other. The obligation of the contract being a creation of the state, no Federal right supports the appellant's claim that the contract has been broken, Gully v. First Nat'l Bank, 299 U. S. 109, 57 S. Ct. 96, 81 L. Ed. 70, and insofar as the complaint alleges an invasion of the plaintiff's property right to seniority through a secret, discriminatory and conspiratory agreement between the Railroad and the Brotherhood, it sounds in tort, and is to be adjudicated upon the applicable common law of the state. It does not raise a Federal question. The mere fact that one of the alleged conspirators comes into existence through the operation of a Federal law does not bring into question either the validity or the interpretation of the statute. . . ."

The petitioners appear to have based their cause of action upon the fact the petitioners acquired seniority rights along with others

> "who entered the service between the 6th day of August, 1941, and before the 22nd day of December, 1942." [Complaint par. XVII, Tr. p. 10.]

One case usually cited to show seniority under the Railway Labor Act is not a proper property right on which to base an action is *McMurray, et al. v. Brotherhood of Railroad Trainmen, et al.* (D. C. Pa., 1931), 50 F. 2d 968, as follows:

> "As to the claim of pecuniary injury, it is at least doubtful whether the seniority rights which are based

upon the joint agreement between the brotherhood and the Pennsylvania Railroad are property rights of such a nature as to justify the court in intervening in the internal operations of the brotherhood. The railroad and the brotherhood, by mutual consent, can vacate the seniority regulations at any time, and either party can withdraw from them after thirty days notice to the others. The right is, therefore, somewhat intangible."

See also, to the same effect:

Starke v. N. Y. C. & St. L. R. Co. (C. A. 7th, 1950), 180 F. 2d 569, 571, and 142 ALR 1060 (1943).

(2) Appellants in their complaint in paragraphs XVII [R. p. 10] and XXI [R. p. 12] have alleged the bare conclusion that the contract in relation to seniority between the carrier and the Brotherhood was "arbitrarily, capriciously and fraudulently made." This sort of an allegation was also discussed in *McMurray v. Brotherhood of Railroad Trainmen* (Pa., 1931), 50 F. 2d 968, 970, and held insufficient in that the allegation is exceedingly vague, and sets forth a conclusion rather than a fact.

See, also, *Davis v. Southern Ry. Co.* (Ala., 1952), 54 So. 308, to the effect the bare allegations of fraud are insufficient for petitioners to base an action in the Courts under facts identical with this case.

II.

The Decision Below Is Clearly Correct.

A. The National Railway Adjustment Board Has the Exclusive Primary Jurisdiction in This Matter.

The petitioners have not attempted to take their case to the proper administrative tribunal [National Railroad Adjustment Board,[6] Complaint pars. XXV-XXVIII, R. pp. 14-15]. The matter of negotiating seniority status between the carrier and the Brotherhood (the bargaining agent of the employees) was within the authority of the Brotherhood under the provisions of the Railway Labor Act. That petitioners object to the result of the bargaining does not give this Court jurisdiction. The jurisdiction point developed by all the cases has been that the discrimination, or the matter contracted upon, was prohibited, not by the Railway Labor Act, but by some other Federal Statute. (*Steele, Tunstall* and *Howard* cases.) Here the question of seniority is squarely within the authority of the Railway Labor Act, and resort to the administrative remedy (National Railway Adjustment Board) is a prerequisite to equitable relief.

The Federal Court is without jurisdiction to entertain suits similar to the suit under consideration here, and the matter is one for administrative determination.[7]

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[6]*Randolph v. Missouri-Kansas-Texas R. Co.* (1949), 85 Fed. Supp. 846; *Missouri-Kansas-Texas R. Co. v. Randolph* (1950), 182 F. 2d 996; *Davis v. Southern R. Co.* (Ala., 1952), 54 So. 308.

[7]*Switchmen's Union, etc. v. National Mediation Board, et al.* (1943), 320 U. S. 297, 88 L. Ed. 61; *General Committee, etc. v. Missouri-Kansas-Texas Railroad Company, et al.* (1943), 320 U. S. 323, 88 L. Ed. 76; *D. C. and General Committee, etc. v. Southern Pacific Co., et al.* (1943), 320 U. S. 338, 88 L. Ed. 85.

The case of *Order of Railway Conductors v. Pitney* (1946), 326 U. S. 561, 90 L. Ed. 318, 323, pointed out:

> "An agency especially competent and specifically designated to deal with it has been created by Congress. Under these circumstances the court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then. See *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478, 483, 484, 84 L. ed. 876, 880, 881, 60 S. Ct. 628, 42 Am. Bankr. Rep. (N. S.) 216; *Burford v. Sun Oil Co.*, 319 U. S. 315, 87 L. ed. 1424, 63 S. Ct. 1098. Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with the statute."

In *Starke v. New York, Chicago & St. Louis R. Co.* (Ill., C. A. 7th, 1950), 180 F. 2d 569, that court pointed out an employee such as any one of the petitioners in this case could take his case to the National Railway Adjustment Board. Under these circumstances the Court should exercise equitable discretion to give the National Railway Adjustment Board the first opportunity to pass on the issue. Only after the National Railway Adjustment Board acts, but not until then, can it plainly appear that such relief as is sought here is necessary to insure compliance with the statute. (*Slocum v. Delaware, L. & W. R. Co.* (1950), 339 U. S. 239, 94 L. Ed. 795, 799-800, and *Order of Railway Conductors of America v. Southern Railway Company* (1950), 339 U. S. 255, 94 L. Ed. 811, 814.)

B. The Steele Case.

The issue involved is the right of the bargaining representative[8] to negotiate a contract with the carrier that has an unfavorable effect on some of the members of the craft represented as relates to seniority. The bargaining representative, under the provisions of the Railway Labor Act, represents all the employees of the craft,[9] and in the instance of this railway, all operating employees [R. p. 5, par. IV]. What was done in this matter was exactly what was approved by the court in *Steele v. Louisville & Nashville R. R. Co.* (1944), 323 U. S. 192, 89 L. Ed. 173, 183, wherein it was stated:

> "Variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, the type of work performed, the competence and skill with which it is performed, are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit."

Thus, the petitioners call upon this court to set aside the above holding in the *Steele* case, which has been followed in the railroad industry long prior to as well as since 1944.

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[8]The Brotherhood of Railway Trainmen [R. p. 10, Par. XVI, and p. 5, Par. IV].

[9]*Steele v. Louisville & Nashville R. R. Co.* (1944), 323 U. S. 192, 89 L. Ed. 173, 183.

C. The Slocum Case.

The petitioners are still employees of the carrier [R. p. 4, par. III, and p. 13, par XXIII], and the outcome of their contentions will have a prospective as well as a retrospective effect upon the collective bargaining contract in question [R. p. 12, par. XXI]. It is obvious the interpretation sought by petitioners will govern the future relations of the carrier and its employees, including the petitioners. Such a type of grievance has been considered a potent cause of friction leading to strikes. The National Railway Adjustment Board, with its long and varied experience, understanding, railroad problems and speaking the railroad jargon, was established to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes. The National Railway Adjustment Board has been given the exclusive primary administrative jurisdiction in the matter before the court (*Slocum v. Delaware, L. & W. R. Co.* (1950), 339 U. S. 239, 94 L. Ed. 795), and petitioners' failure to proceed before the National Railway Adjustment Board bars the present action.

D. The Action Is Barred by the Statute of Limitations and Laches.

These grounds were presented to the trial court [R. p. 45, pars. 4 and 5, and p. 48, pars. 9 and 10] and it was noted in the Court of Appeals [R. p. 64] that "while other issues presented by the motions to dismiss are weighty and critical, they are not of as much immediate concern as jurisdictional and procedural questions." [R. p. 65.]

It is appreciated Rule 8(c) of the Rules of Civil Procedure (28 U. S. C. A.) provides the defense of statute of limitations and laches shall be set forth in the responsive

pleading rather than a motion to dismiss. However, it was pointed out in *Stanley v. Bird* (Ky., D. C. 1949), 85 Fed. Supp. 358, that under some circumstances when the averments of time appear on the face of the pleading, the matter may be reached by a motion to dismiss.

See also:

Anderson v. Linton (Ill., C. A. 7th, 1949), 178 F. 2d 304, 309-310;

Barnhart v. Western Maryland Ry. Co. (C. A. 4th 1942), 128 F. 2d 709.

Where there is no Federal Statute of Limitations, the State Statute will control as here.

Reed v. Solar Corp. (Iowa D. C., 1946), 69 Fed. Supp. 626;

Warnick v. Bethlehem-Fairfield Shipyard (Md. D. C., 1946), 68 Fed. Supp. 857.

The controlling Statute of Limitation in California is found in Sections 337(1) (four years) and 338(4) (three years) of the Code of Civil Procedure. The statute commenced to run from the date of the execution (1942) of the agreement.

French v. United States Fidelity & Guaranty Co. (N. J. D. C., 1950), 88 Fed. Supp. 714.

In the complaint before this Court, the Collective Bargaining Agreement complained of was negotiated between 1939 and 1942. In Paragraph XVI [Tr. p. 10] of the complaint, it is alleged the contract or agreement complained of was entered into on December 22, 1942, and has remained in existence ever since that time. The complaint was filed October 2, 1951 [Tr. p. 44].

This petitioner's Cause of Action was clearly barred by the elapse of 9 years.

III.

There Is No Important Question of Federal Law.

Petitioners do not allege that on August 6, 1941, a Mediation Agreement in Partial Settlement was executed between the respondent carrier and respondent Brotherhood of Railroad Trainmen in a mediation proceeding entitled "National Mediation Board Docket Case No. A-964" and also known as P. E. Ry. (Pacific Electric Railway Company) Case No. 2230, an extract from which is set forth in the Appendix. This Mediation Agreement of August 6, 1941, provided the seniority of trainmen[10] entering service on or after August 6, 1941, would be governed by seniority shown on the System (merged) Roster. Also, the Mediation Agreement contained the usual savings clause (Appendix) providing additional seniority rights acquired by trainmen are subject to future modification or change by agreement between the Management and the Brotherhood of Railroad Trainmen.

Thus, the petitioners in accepting employment after August 6, 1941, accepted employment subject to the then existing mediation agreement and are in error in stating the redrafted labor agreement of December 22, 1942, took away any seniority rights. The allegations in the complaint [R. p. 7, par. X] that Section 2 of Article 36 was first adopted on December 22, 1942, is obviously in error as the Section in question was first adopted on August 6, 1941,[11] and before petitioners were employed or could have acquired any seniority rights.

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[10]Trainmen as defined in the labor agreement included all types of operating personnel iincluding petitioners.

[11]See appendix which sets forth an excerpt of the August 6, 1941, mediation agreement which is controlling here.

The court in a 1942 case[12] involving the same carrier, and the same bargaining agent[13] that represented the employees of the same carrier, held that the Interstate Commerce Commission could impose conditions for the protection of employees displaced by railroad abandonments. The carrier and the bargaining agent had negotiated concurrently with the litigation, and agreed upon the so-called merged seniority agreement which would insure continued employment for the older men [R. pp. 12-13, par. XXII]. The only question raised by petitioners is whether the bargaining agreement could be made retroactive from the date of the execution of the labor agreement, December 22, 1942 [R. p. 10, par. XVII] to August 6, 1941 [R. p. 10, par. XXII]. It was on August 6, 1941, that the prior mediation agreement established the same seniority provision (Appendix).

If any decision is needed, obviously the trained administrative body specially designated by Congress, that is, the National Railroad Adjustment Board, is best qualified to pass upon this special railroad problem.

A determination of the particular facts of the special "merged seniority" provision found on respondent Pacific Electric Railway Company's property will not be of any assistance to other railroads as the other railroads do not have similar provisions [R. p. 8, par. XI]. By the same token, the interjection of discrimination cases and different posibilities of application of the discrimination cases does not convert a correct decision in a simple case into an important question of Federal law.

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[12]*Interstate Commerce Commission v. Railway Labor Executives and Brotherhood of Railroad Trainmen* (1942), 315 U. S. 373, 86 L. Ed. 904.

[13]The Brotherhood of Railroad Trainmen.

IV.

There Is No Conflict of Decision.

Petitioners do not contend that there is a conflict of decision, and there is no conflict of decision.

Conclusion.

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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December 21, 1953.